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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	No. CR 15-00226 BLF
)	
Plaintiff,)	DEFENDANT'S MOTION <i>IN LIMINE</i> NO.
)	<u>1</u> TO PRECLUDE THE COURT FROM
vs.)	SENDING INDICTMENT INTO THE JURY
)	ROOM
)	
)	Pretrial Conference: July 16, 2015
)	Time: 2:00 p.m.
DOUGLAS STORMS YORK,)	
)	Trial Date: July 20, 2015
Defendant.)	
_____)	Honorable Beth Labson Freeman

Defendant Douglas Storms York, by and through his counsel, submits the following motion in limine in conformity with the Court's pretrial order and Local Rule 47-2. This motion is based upon the attached memorandum of points and authorities, all files and records in this case, and any further evidence as may be adduced at the hearing on this motion. Mr. York reserves the right to supplement this motion during the course of trial as needed.

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ARGUMENT

I. The Court Should Not Send the Indictment Into the Jury Room During Deliberations

Neither the Federal Rules of Criminal Procedure nor case law requires sending a copy of the indictment to the jury room, because the indictment is not evidence. As the commentary to Model Instruction 3.2 (“Charge Against Defendant Not Evidence”) indicates, special care must be taken if the indictment is sent into the jury room during deliberations. Therefore, the better practice is not to send the indictment into the jury room.

Mr. York requests that this Court follow the Committee’s guidance. The language in the instant indictment “tracks” the language of the charged statute. Accordingly, it is probable that jurors will be persuaded by the similarities alleged in the indictment returned by the grand jury and the elements which must be proven in the charged statute to speculate that *another* jury—the grand jury—already made the relevant determinations in this case. Similarly, the indictment recites “the grand jury charges,” and this could persuade those jurors without experience with the grand jury system that another jury already found Mr. York guilty.

Mr. York also requests that this Court caution the jury that the indictment is not evidence. See United States v. Utz, 886 F.2d 1148, 1151-1152 (9th Cir. 1989).

CONCLUSION

For the foregoing reasons, Mr. York respectfully requests that the Court grant this motion, and accord such other relief as this Court deems just. Mr. York requests leave to file further motions as may be necessary.

Dated: July 2, 2015

Respectfully submitted,

STEVEN G. KALAR
Federal Public Defender

s/
GRAHAM ARCHER
Assistant Federal Public Defender